

**Regulation (EU) No 604/2013 (Dublin Regulation) – Judgment C-228/21 and Others
Ministero dell'Interno – No longer possible to bring an action against a manifest and
fundamental difference in the protection policy in the Member State to which the
transfer takes place**

(The State Secretary for Justice and Security against the foreign national)

Foreign nationals can no longer invoke indirect refoulement in Dublin proceedings. In a Dublin procedure, the State Secretary for Justice and Security does not have to assess whether a transfer of a foreign national to another Member State of the European Union leads to 'indirect refoulement'.

The reason for the current ruling is a case about a Pakistani man who belongs to the Ahmadi Muslims. Adherents of this religious movement are a minority who can be discriminated against and persecuted in Pakistan. The man first applied for asylum in Austria and then in the Netherlands. The State Secretary wants to transfer him to Austria on the basis of the Dublin Regulation. According to the man, he runs a real risk of inhumane treatment in Austria, because the Austrian authorities will deport him to Pakistan where he fears persecution.

On 30 November 2023 in Judgment C-228/21 and Others (Ministero dell'Interno), the ECJ ruled that there is no room within the Dublin procedure for a test of indirect refoulement as a result of the asylum policy that applies in a Member State to which the foreign national is transferred. The Court has also held that differences of opinion between Member States as to whether or not a foreign national qualifies for asylum are irrelevant to the question of which Member State is responsible for examining the substance of an asylum application. The judgment of the ECJ leads the Administrative Jurisdiction Division of the Council of State (Division) to reverse its earlier ruling of 6 July 2022. In that case, the Division ruled that the administrative judge is obliged to investigate whether a foreign national runs a risk of indirect refoulement if the appeal gives cause to do so.

In the current ruling, the Council of State ruled that a foreign national in the Netherlands can no longer invoke indirect refoulement in Dublin proceedings. If he fears 'refoulement', he must invoke this in the Member State that is examining his asylum application. Or he must prove in the Netherlands that the asylum procedure in that other Member State is not functioning properly.